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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SHIRLEY SCHEIER, an individual,  
Plaintiff,

v.

CITY OF SNOHOMISH, a municipal  
corporation, and DARLENE GIBSON,  
CHUCK MACKLIN, and ALEXANDER  
ROSS, all individuals,

Defendants.

No. C 07-1925 MJB

NOTICE OF REMOVAL

(FROM SNOHOMISH COUNTY  
SUPERIOR COURT, SNOHOMISH  
COUNTY CAUSE NO. 07-2-08715-8)

(CLERK'S ACTION REQUIRED)

TO: UNITED STATES DISTRICT COURT CLERK  
WESTERN DISTRICT AT SEATTLE

COME NOW Defendants City of Snohomish, Darlene Gibson, Chuck Macklin and Alexander Ross by and through their attorneys of record, and pursuant to 28 U.S.C. §§ 1441 and 1446 hereby request that this matter be removed to Federal Court.

This matter is subject to removal because Plaintiff has alleged, inter alia, that Defendants have violated Plaintiff's rights secured by the Constitution and/or laws of the United States in this civil action. To wit, the Plaintiff is attempting to allege a cause of action pursuant to Title 42 U.S.C. §1983, and requests compensatory damages and an award of reasonable attorneys' fees pursuant to 42 U.S.C. §1988. See Plaintiff's "Complaint" at ¶ 23 attached hereto and incorporated herein by reference.

1 Thus, Plaintiff's Complaint alleges claims based on the Constitution and/or laws of  
2 the United States and this Court has original jurisdiction in light of said claims pursuant to  
3 28 U.S.C. § 1331.

4 Plaintiff's subject lawsuit was filed in Snohomish County Superior Court on or  
5 about November 15, 2007. Defendants City of Snohomish, Darlene Gibson, Chuck  
6 Macklin and Alexander Ross received notice of the suit on November 28, 2007.  
7

8 Therefore, this matter is subject to removal to this District Court as the Plaintiff  
9 herein has filed a suit in a County Superior Court embraced by this District Court and  
10 Plaintiff therein has alleged claims arising under the Constitution and/or laws of the United  
11 States in this civil action.

12 Respectfully submitted this 3<sup>rd</sup> day of December, 2007.

13 KEATING, BUCKLIN & MCCORMACK, INC., P.S.  
14

15 RICHARD B. JOLLEY, WSBA #23473  
16 Attorney for Defendants City of Snohomish,  
17 Darlene Gibson, Chuck Macklin and Alexander Ross  
18  
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1  
2                   DECLARATION OF SERVICE  
3

4                   I, Beverly Eberhardt, hereby declare under penalty of perjury of the laws of the  
5 State of Washington that I am of legal age and not a party to this action; that on the 3rd day  
6 of December, 2007, I caused a copy of Defendant City of Snohomish, et al's Notice of  
Removal to be

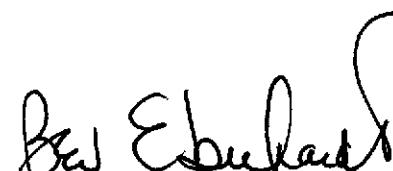
7                   [ ] faxed; and/or  
8                   [ ] mailed via U.S. Mail, postage pre-paid; and/or  
9                   ☒ sent via ABC Legal Messengers, Inc.

10                  from Seattle, Washington, addressed as follows:

11                  Aaron H. Caplan  
12                  ACLU  
13                  705 2nd Ave., Ste 300  
14                  Seattle, WA 98104

15                  Venkat Balasubramani  
16                  Balasubramani Law  
17                  8426 40th Ave SW  
18                  Seattle, WA 98136

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27

  
Beverly Eberhardt

**FILED**

NOV 15 2007

PAM L. DANIELS  
COUNTY CLERK  
SNOHOMISH CO. WASHTHE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR SNOHOMISH COUNTY

SHIRLEY SCHEIER, an individual,

No. 07 2 08715 8

Plaintiff,

v.

## COMPLAINT

CITY OF SNOHOMISH, a municipal  
corporation, and DARLENE GIBSON,  
CHUCK MACKLIN, and ALEXANDER  
ROSS, all individuals,

Defendants.

1. This Complaint arises out of the unlawful detention and arrest of Shirley Scheier by City of Snohomish police officers, without reasonable suspicion or probable cause, during the lawful exercise of First Amendment rights by Scheier.

COMPLAINT - 1

AMERICAN CIVIL LIBERTIES UNION  
OF WASHINGTON FOUNDATION  
705 Second Avenue, Suite 300  
Seattle, Washington 98104-1799  
(206) 624-2184

ORIGINAL

## PARTIES

2. Plaintiff Shirley Scheier ("Scheier") is a natural person who resides in Seattle, Washington.

3. Defendants Darlene Gibson, Chuck Macklin, and Alexander Ross (the “Officers”) are City of Snohomish Police Officers. At all times, their actions alleged in the Complaint were taken during the course of their employment by the City of Snohomish and under color of state law as that term is used in 42 U.S.C. § 1983. The Officers are being sued in their individual and official capacities.

4. The City of Snohomish (the “*City*”) is a municipal entity doing business in the State of Washington. The actions of the Officers were undertaken pursuant to municipal policies of the City.

## JURISDICTION AND VENUE

5. Jurisdiction and venue are proper in this Court because the incidents complained of occurred in Snohomish County, RCW 4.12.020, and because one or more of the defendants resides in Snohomish County, RCW 4.12.025.

## FACTUAL ALLEGATIONS

6. Scheier is an artist and Professor at the University of Washington School of Art. Scheier incorporates photography into her work. Her recent work

1 explores the relationship between humans and their environment, especially in the  
2 context of industrialization. Consequently, she often photographs power lines, power  
3 stations, and other public utility infrastructure. She is careful not to trespass while  
4 taking photographs, and obey all applicable laws while doing so.  
5

6       7. On October 17, 2005, Scheier drove from her home to the City of  
7 Snohomish in order to take photos of power lines near the Snohomish Substation of  
8 the Bonneville Power Administration (“*BPA*”). She took approximately seventeen  
9 photographs of the power lines and towers holding them. Her photos were taken  
10 from different vantage points that are accessible to the public.  
11

12       8. All of her photographs were taken on land accessible to the public,  
13 including from city streets and rights-of-way. Scheier saw no signs prohibiting cars  
14 or pedestrians in those areas, or any signs forbidding photography.  
15

16       9. As she was driving home, Scheier was pulled over by one of the  
17 Officers.  
18

19       10. Though Scheier assumed she had been pulled over for a minor traffic  
20 violation, it quickly became apparent that was not the case. Two other Officers  
21 joined the first officer on the scene, questioned Scheier vigorously about why she was  
22 taking photos, and demanded to see the photos she had taken.  
23

1       11. During the questioning, the Officers demanded she exit her car. The  
2 Officers handcuffed her and patted her down, treating her roughly in the process.  
3

4       12. The Officers then detained her in one of the police vehicles while they  
5 searched her car. A shaken Scheier was released after having been in custody  
6 approximately one hour. She was told that the FBI would be investigating and  
7 contacting her, although there has been no follow-up inquiry by the FBI.  
8

9       13. Scheier notified her Senator of the incident, who requested information  
10 from the City.  
11

12       14. The City maintained that the Officers had acted reasonably under the  
13 circumstances. In a letter to Senator Maria Cantwell dated December 8, 2005, the  
14 City acknowledged that the actions of the Officers were triggered because Scheier  
15 was "taking photographs of the facility." The City further maintained that "[these]  
16 suspicious facts . . . clearly justified the brief detention and actions taken . . ."  
17  
18

19       15. The City thus ratified the actions of the Officers and proclaimed its  
20 municipal policy that taking photographs of public infrastructure such as power  
21 plants from public property is suspicious behavior which justifies detention and  
22 arrest.  
23

25       16. This incident had a variety of negative consequences for Professor  
26 Scheier. She lost, and continues to lose, sleep, and suffered other signs of stress and

1 nervousness following the incident. Equally important, she became reluctant to  
2 engage in photography and her art, for fear of suffering the same fate again.  
3

4 **FIRST CAUSE OF ACTION: TORTIOUS CONDUCT**

5       17. Defendants' conduct constituted the state law torts of negligence,  
6 invasion of privacy, and false arrest.

7       18. The City is responsible in tort for the actions of the Officers under the  
8 doctrine of *respondeat superior*.

9       19. Scheier complied with state tort claim procedures by submitting a claim  
10 on August 31, 2007, which was rejected in a letter dated September 24, 2007. This  
11 action was filed more than sixty days after presentation of the claim.

12       **SECOND CAUSE OF ACTION: FOURTH AMENDMENT (§ 1983)**

13       20. Defendants unreasonably seized and searched plaintiff and her car  
14 without reasonable suspicion or probable cause to believe that plaintiff had been or  
15 was about to be committing a crime.

16       21. Following plaintiff's initial detention, Defendants unjustifiably  
17 prolonged the seizure and used excessive force by handcuffing her and placing her in  
18 the back of the police car.

1           22. Defendants' conduct infringed on plaintiff's right to be free from  
2 unreasonable searches and seizures in violation of the Fourth and Fourteenth  
3 Amendments to the United States Constitution.

4           23. Defendants' actions taken under color of state law violated plaintiff's  
5 federal rights under 42 U.S.C. § 1983.  
6

7           8           **THIRD CAUSE OF ACTION: FIRST AMENDMENT (§ 1983)**  
9

10          24. In taking the photographs described above, plaintiff was engaged in  
11 expressive activity protected under the First Amendment to the United States  
12 Constitution.

13          25. Defendants took action against plaintiff substantially motivated by her  
14 exercise of her free speech rights.

15          26. Defendants' conduct infringed on plaintiff's rights under the First and  
16 Fourteenth Amendments to the United States Constitution.

17          27. Defendants' actions taken under color of state law violated plaintiff's  
18 federal rights under 42 U.S.C. § 1983.

**RELIEF REQUESTED**

Plaintiff seeks the following relief:

A. Monetary damages against all defendants in an amount to be determined at trial;

B. Costs and reasonable attorney fees pursuant to 42 U.S.C. § 1988 or any other applicable law; and

C. Such other and further relief as the Court deems just and proper.

DATED this 15<sup>th</sup> day of November, 2007.

AMERICAN CIVIL LIBERTIES  
UNION OF WASHINGTON  
FOUNDATION

By: Aaron H. Caplan,  
WSBA #22525

BALASUBRAMANILAW

By: Venkat Balasubramani  
WSBA #28269